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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,438	10/07/2004	Bernd Bruchmann	4372-11	8484
23117 7590 12/14/2007 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			EXAMINER DICUS, TAMRA	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 12/14/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/510,438		BRUCHMANN ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Tamra L. Dicus		1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 October 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-12 and 19-29 is/are pending in the application.
- 4a) Of the above claim(s) 19-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3--12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

The claim objections, 112 rejections, Double Patenting and combination rejections, except where noted below, are withdrawn.

### ***Election/Restrictions***

Newly submitted claims 19-29 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the claims are directed to a method including printing and laminating steps not in the originally presented article claims. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 19-29 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 103***

Claims 1-12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kaczun et al. (WO 97/38849) in view of Anderson et al. as previously presented in the 06/19/07 Office Action.

To the solvents of claim 1, while Kaczun does not expressly teach them, Anderson teaches solvents such as alcohols as recited in col. 23 (Table) and col. 3, lines 23-24.

It would have been obvious to one having ordinary skill in the art to have modified the ink layer of Kaczun to employ the ink composition of Anderson including the solvents because they are useful ingredients for the aqueous dispersion for inks or coatings to arrive at the hyperbranched polyester with the claimed acid numbers exhibiting improved adhesion to polyolefin films (col. 3, lines 23-24, col. 23, and col. 25, lines 30-55, Anderson).

Claim 5 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Kaczun et al. (WO 97/38849) in view of Anderson et al., and further in view of Peiffer et al. as previously presented in the 06/19/07 Office Action.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Response to Arguments***

Applicant's arguments filed 10-04-07 have been fully considered but they are not persuasive.

Applicant argues the Double Patenting rejection. At this time, the arguments are convincing and the rejection is thus withdrawn.

Applicant argues the combination of Kaczun in view of Anderson, alleging there is no hint in Anderson to include polymers into the solvent-based perfume barrier layer of Kaczun. However, this is not a persuasive argument because Kaczun teaches in general inks printed in between polyolefin-based film layers, polypropylene and polyethylene (see page 4) and Anderson explicitly

teaches the inventive hyperbranched polyester included in inks, used in film printing and packaging, for the reason of adhering well to a polyolefin films also (see col. 25, lines 30-45). It is significant to note that Kaczun does not teach that the print layer is organic solvent based contrary to applicants' arguments on page 12 of the amendment. Rather, Kaczun generally teaches inks which would include both solvent-based and water-based inks and thus combination with Anderson is proper.

Thus it would have been obvious for one having skill in the art to use printing ink composition as disclosed by Anderson in the ink layer, not the barrier layer, of Kaczun's polyolefin packaging successfully. Pfeiffer is still used for the same reasons. All other arguments are moot in view of the arguments presented.

A *prima facie* case has been established, and therefore the burden shifts to the Applicant to submit additional objective evidence of nonobviousness, such as comparative test data showing that the claimed invention possesses improved properties not expected by the prior art. Arguments of counsel cannot take the place of factually supported objective evidence. See, e.g., *In re Huang*, 100 F.3d 135, 139-40, 40 USPQ2d 1685, 1689 (Fed. Cir. 1996); *In re De Blauwe*, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984). Until the Applicant has convincingly argued or has provided evidence to the contrary, the rejections are maintained.

### ***Conclusion***


Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamra L. Dicus whose telephone number is 571-272-1519. The examiner can normally be reached on Monday-Friday, 7:00-4:30 p.m., alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Tamra L. Dicus  
Examiner

AU 1794

12/7/07

Callie Shusho  
Callie Shusho  
Supervisory Patent Examiner